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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/385,834	08/30/1999	JEFFREY L. C. WRIGHT	76891	9704

7590 12/17/2001

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EXAMINER

QAZI, SABIHA NAIM

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 12/17/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/385,834</b>	Applicant(s) <b>Jeffery L.C. Wright</b>
Examiner <b>Sabiha Qazi</b>	Art Unit <b>1616</b>



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Oct 9, 2001.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1, 5-11, 34, 36, 38, and 39 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1, 5-11, 34, 36, 38, and 39 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15)  Notice of References Cited (PTO-892) 18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 17 20)  Other: \_\_\_\_\_

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**Final Office Action on Merits**

**Status of the application**

Claims 1, 5-11, 34, 36, 38 and 39 are pending.

Claims 30-33, 35 and 37 are canceled.

Claims 1, 5-11, 34, 36, 38 and 39 are rejected

No claim is allowed.

Applicant's IDS and response filed in paper nos. 17 and 18 on 10/9/01 is hereby acknowledged.

Claims are amended to include that ester of an omega fatty acid is "derived from fish oil". Applicant argue that prior art teaches "the use of fatty acids derived from vegetable oil" and "there is no teaching or suggestion that fatty acid may be derived from a fish oil". Furthermore, "there is no teaching nor suggestion that the fatty acids may be EPA or DHA". This Examiner's position that fatty acids are same whether they are derived from fish oil or from vegetable oil. Regarding EPA or DPA, these are generically taught and considered obvious absent expected results. Therefore, for the reason cited claims are considered obvious over the prior art of record.

Claims 1, 5-11, 34, 36, 38 and 39 stand rejected under 35 U.S.C. 112, first paragraph, under 35 U.S.C. 103 as being unpatentable over Burdick et al. (EP 1,004,594) and Novak Egon (WO 00/04887) for the same reasons set forth in our previous action.

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***Conclusion***

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephone Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha N. Qazi, whose telephone number is (703) 305-3910. The examiner can normally be reached on Monday through Friday from 8 a.m. to 6 p.m. The fax phone number for this Group is (703) 308-4556. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

12/12/01



SABIHA QAZI, PH.D  
PRIMARY EXAMINER